

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
January 10, 2003
State Capitol, Room 422, Helena, MT

COMMITTEE MEMBERS PRESENT

Senator Walter McNutt, Chairman
Senator Debbie Shea, Vice Chairman
Representative Roy Brown

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Frank E. Buckley, Utility Analyst
Larry Nordell, Economist
Mandi Shulund, Secretary

VISITORS PRESENT

John Fitzpatrick, NorthWestern Energy
Chuck Evilsizer, Attorney
Mr. and Mrs. Jay Preston, Ronan Telephone Company
Joseph Doyle, Virginia City
Con Melee, Energy West Resources

CALL TO ORDER

The meeting was called to order by Chairman McNutt.

Discussion of Legislation

Bob thanked the committee for taking time out of their busy schedules to meet and because time is an issue the standard items of the status report and previous meeting minutes were not included on this agenda. Primarily, Bob wanted to discuss the work of the energy forum that has been conducted under the organization of the Public Service Commission and provide the committee with an update. Many people have participated in the forums, including some PSC staff and Commissioners, MCC, NWE, and PPLM. An initial topic of the forums was the procurement guidelines that have been published and commented on and progress is being made in this area. The forum participants have turned to some legislative issues that have come up primarily because of

the action on HB474. There has been discussion about what needs to be done legislatively in light of the fact that some of the provisions have been voided and some people have shown interest in going beyond the minimalist approach regarding what needs to be done to respond to HB474. Bob handed out a working draft of LC1019, which was prepared as a general re-write of the restructuring laws so there is a lot of material included. This draft is a product of NWE but Bob also handed out a summary of what he thinks the bill re-write does. One of the items that most people have been interested in is reinserting the definition of electricity supply and what it consists of for the default supplier and providing a cost recovery mechanism for the default supply costs, which was in HB474. Bob feels that there is consensus on including this in the recommendation from the group. Another recommendation of the bill is to change transition costs to stranded costs and transition terminology to customer choice terminology because there is no specified transition period. The original SB390 established pilot programs with a 5-year transition period in mind that were intended to lead to full customer choice at the end of the transition period. Because this bill restricts choice, it re-establishes the pilot program concept to test the feasibility of ultimately going to choice. This way there is not total foreclosure of choice, but the pilot programs as rewritten are more restrictive to test the feasibility of going to full choice. There is a restriction on customer choice in this bill and what the language specifies at this point is that the large customers that demand over 5 megawatts have to stay within the market choice scenario and customers under 100 kilowatts of demand, such as residential and small business, have to stay with the default supplier, except for the pilot programs and other special allowances that the Commission might make. The bill allows some flexibility between 100 kilowatts and 5 megawatts of demand, but there is discussion about what those cut off points need to be, and the bill also allows the Commission to require choice offerings from the default supplier so for the smaller customers the choice offerings, to the extent there were any, would be within the default supply. The bill allows the Commission to establish the terms and conditions for leaving and returning to default supply. This would

primarily apply to the middle tier of customers, which Bob feels is an important issue. The bill eliminates the transition period and the concept of transitioning. HB474 named the distribution provider as the default supplier, which is recommended in this bill. MCC has always felt that the distribution provider should be the default supplier and the Commission currently has a rule in place that did this prior to HB474, but this is a good clarification and it also provides that the Commission would regulate default supply. The bill defines the obligation of transmission entities, which may have come about because of the current discussion with transmission restructuring and RTO West. Rate moratorium provisions are eliminated in this bill because they are currently an issue of the past, and this would mainly be a cleanup issue that provides that the Commission will monitor workable competition and report to the Legislature on this topic for the purpose of future consideration with moving to choice. Because this bill eliminates the concept of transitioning, the Transition Advisory Committee will be eliminated. Even with these current provisions, there is still a lot of discussion concerning this bill and Frank indicated that NWE is still doing some clean up work on it but this is, for now, the direction that the discussions have taken. There was a provision in the outline that was originally provided by NWE as some of the items they were interested in that would also have allowed default supply ownership of generation resources up to a 50% level. This item is not in this draft but there still is some interest in discussing this option. Senator Shea asked if this issue would include the Universal Systems Benefits Program (USBP) and Bob stated that the USBP is being dealt with in a separate bill. Senator McNutt pointed out that he is sponsoring a bill that requires USBP to be spent where it is generated and Senator Johnson has a bill to extend USBP. This idea came out of TAC Meetings and legislation that the TAC was requesting.

MCC has participated in these forums by providing information, asking questions and monitoring the discussions, but has not actually promoted one point of view or the other. The basic purpose for this meeting, besides to provide general information to the Committee is to discuss and get feedback from the Committee regarding the role that MCC should take in the development of this

legislation and what the Committee's views may be. Bob handed out some general principals that, if MCC were to actively promote any specific concepts, would possibly be of interest to MCC and may deserve further consideration. Bob feels that there is general consensus on the point of view of a permanent default supply role for the distribution provider, which there has been debate about over the years and since this was a provision in HB474, Bob doesn't feel that it is too controversial. The role of the default supplier would be to be the most efficient aggregator and supplier. There has been debate over this point the past several years as well; the debate being if the default supplier should try to achieve the best price for the default supply customers or should the default supplier not be concerned about the price and just be there to provide the service and if the price does go up, it may spur competition, which would be fine. Bob feels that the vast majority of people who have been interested in this issue have taken the position that the default supplier should be the most efficient provider and seek to achieve the lowest cost. Regarding the procurement rules that the Commission issued, MCC provided comments stating that one of the major goals of default supply should be to achieve the lowest possible cost. Senator McNutt asked Bob if choice was restricted, wouldn't it stand to reason that the role would have to go to the most efficient aggregator or supplier since Senator McNutt didn't feel that the default supplier had any concern about price. Bob agreed with Senator McNutt, other than the slight exception of the pilot programs or the provision in this draft that allows people to petition the PSC to allow them to aggregate customers to allow for a small amount of choice. Bob feels that Senator McNutt is correct in that it has been important in the past because people who haven't chosen would be even more important here because of the restrictions. An important point in MCC's experience and perspective is for the PSC to have authority to determine the conditions for the middle tier customers to come and go to default supply. There are some issues that this option raises for other customers and it is important for the PSC to have the flexibility to deal with this to eliminate any undue impact on the remaining customers. These first three points that Bob addressed were also emphasized by Commissioner Rowe.

There are various thoughts on the rationale of limited customer choice but there are not options that seem to be viable economically for most of these customers. Bob feels that one of the overriding concerns is that having choice available for the extremely small percentage of customers who exercise it can create some uncertainties for default supply and portfolio planning that can have cost impacts for the remaining customers. The extent of those cost impacts is something that the company is looking at right now, partly to determine the magnitude of the this issue and also what the appropriate cut off point should be, whether it should be below or above 100 kilowatts. The default supplier should have the authority to own its own resources, whether they be demand side or generation, and Bob feels this would be advantageous and help provide some restraint on those market based bids if the default supplier compared the cost of ownership to the bids they receive from competitive suppliers. This is the only issued that Bob discussed that is not in the draft bill. Bob sees this as a very interesting and worthwhile principal to pursue and at this particular point, although it was in the company's original outline and not in the draft, Bob feels that they are not ruling this issue out.

The points that Bob covered constitute a brief outline of where things are in discussions with the issues and principals that MCC would promote if more actively involved in the customer choice bill. These principals are generally shared by the majority of the people who have participated in these discussions, although there are a few people who would argue with these and say that we should stick with what has been done. Representative Brown asked Bob who put together the draft and Bob stated that this particular draft was prepared by NWE, which Bob felt was a product of their listening to concerns and gathering input during the energy forums so it may not be strictly their work product, but they did prepare the actual draft. Representative Brown asked if the consensus that Bob referred to was consensus with NWE or the other people involved in these forums. Bob stated that he was referring to consensus among the participants in these forums although Commercial Energy and Energy West Montana are, on a few of these items, not in agreement and would probably

prefer to continue to leave choice open. Representative Brown asked Bob why transition was changed to stranded costs. Bob said the concept of transition was basically removed from those provisions because there is no transition period and rather than have transition costs, they just renamed them stranded costs. Representative Brown understood this draft to propose basically to take default supply and say they can't go out for choice anymore and that the PSC and others can go get long term contracts filled with default supply with limited ways to get out of them. Bob basically agreed with Representative Brown's statement, except for there are three tiers and many of the larger customers have already left and would have the opportunity to leave. There is still the pilot program option as well as the option for petitioning for special programs and Bob feels that these provisions were put in to respond to the concerns that Commercial Energy and Energy West Montana raised about wanting to still be able to prove that something could be done and in the future choice could be reconsidered. Rep Brown asked if there were any provisions in the draft for the second or third tier to get into default supply and Bob stated that in this draft 5 megawatts and above would not be able to return to default supply and 100 kilowatts to 5 megawatts would have the option to return to default supply, with the PSC establishing the terms for that return.

Senator McNutt felt that MCC should be actively involved in this process and lend expertise in a constructive way toward the development of this draft. He also felt this would be an opportunity to get this taken care of and put some pilot programs in place to see what could be developed in the future and perhaps settle the issues and eliminate the uncertainty for those customers.

Representative Brown agreed with Senator McNutt in that MCC needs to be actively involved but voiced concern about the direction the draft is going.

Representative Brown feels that the draft created more stranded costs and when default supply is restricted in where to go, long term contracts would be needed but on the other hand, long term contracts create more stranded costs for anyone who wanted to go to choice in the future. Senator Shea asked Bob what his thoughts were about MCC getting more involved. Bob stated that his inclination

would be to get more involved. Bob also feels that there has been a lot of discussion of these particular items and they are consumer oriented and legitimate for MCC to pursue. Senator McNutt stated that he believes MCC is the consumer advocate and feels it would be in the consumers' best interest if MCC were actively engaged in this process. MCC brings expertise to this area and it is certainly appropriate for MCC to provide every good faith effort in looking after the consumer, which is part of MCC's responsibility. With MCC being active during the process instead of waiting and coming in later with concerns, this can eliminate concerns as the process goes along and Senator McNutt sees nothing wrong with MCC working through this for those reasons.

Senator Shea agreed with Senator McNutt and did request an update on how the Great Falls situation is coming along, which was another thing that Senator Shea felt that MCC needs to be more active in because it is for the best interest of the consumer. Senator McNutt felt that there needed to be more dialog so the Committee is kept updated on what is going on with the proceedings between the PSC and Montana First Megawatts and what MCC envisions their role is. Bob stated that the PSC anticipates the next step in Montana First is for NWE to reapply. The PSC requested procedural and substantive comments on NWE's application filed in December. Since MCC had many questions about the applications, comments were not filed on merits but MCC did file a request for hearing. Subsequent to that, the PSC in effect denied that request for hearing and issued a notice saying that they were going to provide a short comment period, although there was never a formal notice of that action. The PSC decided after analyzing the application that it was unclear what was at stake so they decided to reject the application and requested that NWE refile providing additional information on what the impacts would be of the transactions they are asking to be approved. NWE filed a Motion for Reconsideration and on 1/9/03 the PSC denied their motion and adopted a motion that calls for an expedited procedural conference for the parties to discuss how the application is going to be processed and what the issues would be. Senator Shea stated that Great Falls City Commissioners feel that any delay

is a setback for their community and she hopes that this can go forward with parties working together. Bob stated that there seems to be an interest at the PSC to move with this as quickly as they can while still resolving the issues that they have. One Commissioner stated that it would be faster for NWE to refile because the information would be provided instead of the parties having to ask questions to gather information later.

Representative Brown asked Bob if there has been any discussions or legislation involving the ability of the PSC to pre-approve contracts. Bob assumed that there has been discussion about this since there have been several bill draft requests on the subject, but MCC has not participated in any of those discussions. This subject is not part of the draft bill that Bob handed out, although there is a provision in the draft bill that puts into language the understanding that everyone has been proceeding on that the PSC will issue procurement guidelines and that the procurement then would ultimately be tested against those guidelines. Bob understands that MCC would participate to the extent appropriate for the position of the MCC and not of the Legislative Committee. Senator McNutt agreed.

Public Comment

Chuck Evilsizer, who represents The Ronan Consumer Advisory Committee and Ronan Telephone Company, addressed the committee by requesting on behalf of the Chairman of the Ronan Consumer Advisory Committee a meeting with the Legislative Consumer Committee to discuss the ongoing dispute between Ronan Telephone Company and Blackfoot Telephone Company. A stipulation has been presented to the PSC, which MCC is opposing. Ronan Telephone Company has a meeting scheduled with MCC and AI Buckalew but aside from that, The Ronan Consumer Advisory Committee would like to meet with the Legislative Consumer Committee in the near future. Mr. Evilsizer stated that the Advisory Committee is not a party to the Ronan Telephone Company/Blackfoot Telephone Company docket; they would just like a chance to meet with the Committee to provide them with input as a

representative of consumers in that area. Senator McNutt did clarify that the Legislative Consumer Committee is different from Consumer Counsel and that if MCC is working with Al Bucklaw in process, the Consumer Committee tries not to get into this area of what MCC does. The Committee will take public comment but they are not going to try to change what Al Buckalew is doing because he has been hired in good faith by MCC to offer his testimony. Senator McNutt and Representative Brown suggested that Mr. Evilsizer leave his information at their offices and they would try to get a hold of him when possible to try to put something together. Con Melee with Energy West Resources stated that they were involved with the proposed legislation discussed and they have a great deal of concern, referring to it as the re-regulation bill. They hope to see dramatic changes or at least suggestions next week at the scheduled PSC energy forum.

Budget/Financial Report

Bob stated that with respect to the 2002/2000 base roll back issue, MCC is not impacted because we are special revenue.

Hiring of Expert Witnesses

D2002.12.153 - Qwest Long Distance: This filing has come out of the 271 process and MCC has supported Qwest's entry into in-region interlata long distance. Qwest has filed some rates with the PSC but there has been a lot of controversy and problems arising with this filing. MCC will be reviewing this application and would request the hiring of Al Buckalew.

D2002.10.129 and D2002.10.131 - Exempt Wholesale Generator filings: MCC requests to retain John Wilson to review these filings. One issue in these filings is how these fit into the default and rather than waiting for the PSC to decide how they are going to handle these in terms of the refilings, MCC would like to start reviewing the information already submitted. Senator Shea asked Bob what procedure he uses to choose what consultants are hired to each particular case. Bob stated that MCC has a long working relationship with many

of the consultants used and that, to the extent that because they have been involved in related issues, it is efficient to use certain consultants because of the learning curve involved. Aside from the efficiency there are some individuals that MCC has developed confidence in and a good working relationship with.

MOTION: Representative Brown moved approval to retain the services of Al Buckalew to assist with the Qwest long distance filing and John Wilson to assist with NWE's exempt wholesale generator filings.

VOTE: The motion passed unanimously.

Adjournment

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this _____ day of _____, 2003

_____, Chairman